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U.S. Naval War College (Editor)

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and over the territorial waters within Guantanamo Bay between high-water mark and the sea and in and about the entrance channel within a line bearing true south extending three nautical miles from the shore line of the eastern boundary of Guantanamo Naval Reservation, as laid down in the Agreement between the United States of America and the Republic of Cuba signed by the President of Cuba on February 16, 1903, and by the President of the United States on February 23, 1903, a line bearing true south extending three nautical miles from the shore line of the western boundary of said Naval Reservation, and a line joining the seaward extremities of the above two bearing lines.

[Regulations similar to No. 10 above.]

(16) *Airspace Reservation over Portions of Ulster and Dutchess Counties, New York*

(Executive Order No. 9090, 6 March 1942; discontinued by No. 9566, 5 June 1945, 10 F. R. 6793.)

[Area:] The airspace above the following described portions of Ulster and Dutchess Counties, New York . . .

All that area within Ulster and Dutchess Counties, New York, lying within the following-described boundary:

Beginning at the River Landing on the West Bank of Hudson River at East Kingston, Ulster County; thence in an East-Northeasterly direction of the center line of the Central New England Railroad Bridge over Shehomeko Creek at Pine Plains, Dutchess County; thence South-Southeast to the center line of the New York Central Railroad Bridge over Ten-Mile River at Dover Plains, Dutchess County; thence West-Southwest to the Southwest corner of the Mid-Hudson Bridge at Poughkeepsie, New York, and continuing on this line to the West Bank of the Hudson River, Ulster County; thence along the West Bank of the Hudson River to the point of origin.

[Regulations:] Within [this airspace reservation] no person shall navigate a civil aircraft except by special permission of the Administrator of Civil Aeronautics.

2. Foreign State Aircraft Over National Territory

NOTE. The principle that a State has complete and exclusive sovereignty over the air-space above its territory has been repeatedly enunciated during the past thirty years. It was embodied in the Convention for the Regulation of Aerial Navigation signed at Paris on 13 October 1919 (11 League of Nations Treaty Series, p. 173); in the Convention on Commercial Aviation signed at Habana on 20 February 1928 (U. S. Treaty Series, No. 840); and in the Convention on International Civil Aviation signed at Chicago on 7 December 1944 (U. S. Treaties and Other International Acts Series, No. 1591).

In line with this principle, the Paris Convention provided (Article 32) that "no military aircraft of a contracting State shall fly over the territory of another contracting State nor land thereon without special authorization." The Chicago Convention contains a similar provision (Article 3c) as to state aircraft, i. e., aircraft used in military, customs and police services. Both Conventions leave in doubt the treatment to be accorded to foreign State aircraft forced by weather conditions or distress to fly over a State's territory. Hence, the question arises as to the extent to which an analogy to foreign surface ships forced into a State's territorial waters is to be applied.

This question became acute in incidents which occurred in 1946, when military transport planes of the United States, en route from Vienna in Austria to Udine in Italy, flew over the territory of Yugoslavia. On 19 August 1946, another such plane was shot down by Yugoslav fighters and all of its crew perished. The Yugoslav Government later paid to the United States an indemnity of \$150,000 for the lives of the five members of the crew who perished on the latter occasion; no indemnity was paid for either of the aircraft which were lost. The published diplomatic correspondence between the two Governments is reproduced here, in part.

A. THE AMERICAN AMBASSADOR IN BELGRADE TO THE
YUGOSLAV MINISTRY OF FOREIGN AFFAIRS, PUBLISHED
20 AUGUST 1946

(15 Department of State Bulletin, p. 415.)

Reference is made to previous representations with regard to alleged violations of Yugoslav territory by United States aircraft and the forcing to the ground by Yugoslav aircraft of an American C-47 air transport on August 9. United States authorities in Austria and Italy have now reported the results of their investigation in this connection, from which it appears that on August 9 airplane no. 43-15376 of the C-47 type, while on a regular flight from Vienna to Udine encountered bad weather over Klagenfurt and was engaged in an effort to find its bearings when at approximately 1300 it was attacked by Yugoslav fighters. The attackers fired repeated bursts at the aircraft as a result of which one passenger was seriously wounded and the plane forced to crash land, wheels retracted, in a field near Kranj twelve kilometers from Ljubljana. As for other "violations" of Yugoslav territory referred to in the Foreign Office's note of August 10, alleged to total 172 between July 16 and August 8, United States authorities in Austria and Italy report that only 74 flights have taken place between those dates and that operations officers at Hoersching and Tulln airfields have thoroughly briefed all crews to use approved routes avoiding Yugoslavia.

It would be assumed that the authorities of Yugoslavia would wish to render a maximum of assistance and succor to aircraft

of a friendly nation when the latter are forced by the hazards of navigation in bad weather over dangerous mountain barriers to deviate from their course and seek bearings over Yugoslav territory. On the contrary, Yugoslav fighter aircraft have seen fit without previous warning to take aggressive action against such a United States transport plane, the identification of which was clearly apparent from its markings, and have forced it to crash land after wounding one of its passengers. Subsequently Yugoslav authorities have detained the plane, its crew and passengers and refused to permit American consular officers access to the plane or personnel until specific representations were made by the United States Embassy to the latter effect. Finally, no reply has been forthcoming to the Embassy's requests that the crew, passengers and plane be released from detention and the personnel permitted to depart from Yugoslavia without delay. Meanwhile, it is reported from Trieste that a second United States plane en route to Italy from Austria is missing after having last reported itself under machine gun attack.

The Embassy is instructed to protest most emphatically against this action and attitude of the Yugoslav authorities, to renew the United States demand for immediate release of the passengers and crew now able to travel, and in conclusion to request an urgent Yugoslav statement whether in the future the United States Government can expect that the Yugoslav Government will accord the usual courtesies, including the right of innocent passage over Yugoslav territory, to United States aircraft when stress of weather necessitates such deviation from regular routes. The Yugoslav authorities have already received United States assurance that United States planes will not cross Yugoslavia without prior clearance except when forced to do so by circumstances over which they have no control. The United States Government, pending receipt of detailed information regarding injury to persons on these two planes and the cost of repairing planes, fully reserves its position in matters of claims for compensation.

**B. THE ACTING SECRETARY OF STATE TO THE YUGOSLAV CHARGÉ
D' AFFAIRES IN WASHINGTON, 21 AUGUST 1946**

(15 Department of State Bulletin, p. 417.)

SIR: The American Embassy in Belgrade has informed me of the contents of the message received from the Yugoslav Foreign Office on August 20. The replies of the Yugoslav Government

to our inquiries are wholly unsatisfactory to the Government and shocking to the people of the United States.

Your government expresses regret because of what you call an unhappy "accident." Your government is aware that this was no accident; that a fighter plane of your government deliberately fired upon a passenger plane of the United States Government. Your government states that one reason for the "accident" was that since August 10th there have been forty-four instances where American planes flew over Yugoslav territory. The records show that since August 10 the total number of flights scheduled for that route was only thirty-two. These flights were made under instructions to avoid flying over Yugoslav territory and if in any instance a plane was over Yugoslav territory it was only because the pilot was forced by bad weather outside of the corridor.

But this attack of August 19th was not the first. On August 9 a United States passenger plane while in the vicinity of Klagenfurt was fired upon by a fighter plane of the Yugoslav Government. It was forced to make a crash landing. When it landed, the crew and passengers were taken into custody by Yugoslav authorities and are still held as prisoners of the Yugoslav Government.

For some days the representative of the United States Government was unable to communicate with these American citizens. Finally he was permitted to do so but only in the presence of the military authorities of Yugoslavia. Twelve days have passed and these American citizens are still held by Yugoslavia.

The message now received from our representative indicates that on the 19th of August when this second passenger plane was fired upon, some if not all, of the occupants were killed. They met their death not by "accident" but by the deliberate acts of Yugoslav authorities. The excuse given for taking the lives of these American citizens is that the plane in which they were travelling was a few kilometers inside of Yugoslav territory. Your government asserts that for twelve minutes prior to the attack the pilot of the plane was "invited" to land. At the time you claim the pilot was "invited" to land the records at Klagenfurt show the pilot advised the Klagenfurt station that he was over Klagenfurt, which is well outside of Yugoslav territory, and was all right.

These outrageous acts have been perpetrated by a government that professes to be a friendly nation. Until we have had opportunity to confer with the survivors of these two attacks

and we receive such other evidence as is available, we make no statement as to the exact location of the two planes when they were attacked.

Regardless of whether the planes were a short distance within or without the corridor, they were unarmed passenger planes en route to Udine, in Italy. Their flight in no way constituted a threat to the sovereignty of Yugoslavia. The use of force by Yugoslavia under the circumstances was without the slightest justification in international law, was clearly inconsistent with relations between friendly states, and was a plain violation of the obligations resting upon Yugoslavia under the Charter of the United Nations not to use force except in self-defense. At no time did the Yugoslav Government advise the United States Government that if one of its planes should, because of weather conditions, be forced a mile or two outside of the corridor or, because of mechanical troubles, should find itself outside of that corridor, the Yugoslav Government would shoot to death the occupants of the plane. The deliberate firing without warning on the unarmed passenger planes of a friendly nation is in the judgment of the United States an offense against the law of nations and the principles of humanity.

Therefore the Government of the United States demands that you immediately release the occupants of these planes now in your custody and that you insure their safe passage beyond the borders of Yugoslavia.

The Government of the United States also demands that its representatives be permitted to communicate with any of the occupants of the two planes who are still alive.

If within forty-eight hours from the receipt of this note by the Yugoslav Government these demands are complied with, the United States Government will determine its course in the light of the evidence then secured and the efforts of the Yugoslav Government to right the wrong done.

If, however, within that time these demands are not complied with, the United States Government will call upon the Security Council of the United Nations to meet promptly and to take appropriate action.

C. THE YUGOSLAV PRIME MINISTER TO THE AMERICAN AMBASSADOR IN BELGRADE, 23 AUGUST 1946

(15 Department of State Bulletin, p. 419.)

EXCELLENCY: With reference to our yesterday conversation have the honor to advise you as follows

Regarding the factual state I have nothing to add to the note to the Yugoslav Ministry of Foreign Affairs No. 9860 of August 20, but solely that subsequent reports do not confirm the first ones according to which two members of the crew would have bailed out in parachutes. It appears now that the parachuting object eye-witnesses mistook for occupants of the plane might have been two gasoline barrels wrapped in two sheets. Investigation still being carried out.

It is not possible for the moment to produce a definite detailed report of what had happened apart from that I can on this occasion emphasize only once again the statements of the Ministry's note quoted above which correctly described the circumstances which were causing this regrettable occurrence. In connection with the statements put forth during our conversation yesterday, I have first to point out that it is not correct that the plane had only been a mile or two within Yugoslav territory in the moment when forced down. The plane was 50 kilometers from the nearest point on the frontier. Further I have to underline once more that the Yugoslav fighters were, during almost a quarter of an hour time, inciting the plane to land. They also wanted to show the route to the airport only three miles far away but the aircraft definitely refused compliance with the landing order. Accordingly it does not correspond with the facts the Yugoslav fighters had not warned the plane nor is it correct that the plane had been forced because of weather conditions to deviate from its course. It is notorious in the country where the accident took place that the day was absolutely clear and of perfect visibility.

As for the occupants of the plane forced down August 9, once the investigation got terminated the Yugoslav Government suspended on August 21 any movement limitation imposed upon the persons concerned. During, and for the purpose of the investigation itself, Mr. Hohenthal, the American Consul, was informed thereof and at 7:30 hours on August 22 he took over. It is evident that they are allowed to leave Yugoslavia whenever they want to. Your Government may also, of course, dispose at any time over the aircraft question.

As for the occupants of the plane which crashed on August 19, as already mentioned, none has been found so far. The Yugoslav Government will be only glad to permit the representative of your Government to communicate with any of them who might have survived.

Respectfully yours,
August 23

J. B. Tito.

D. THE YUGOSLAV PRIME MINISTER TO THE AMERICAN AMBASSADOR IN BELGRADE, 31 AUGUST 1946

(15 Department of State Bulletin, p. 505.)

No. 10381

BELGRADE, *August 31, 1946.*

EXCELLENCY: With reference to our conversation in Bled on August 22, 1946, as well as to the statements I made on that occasion on behalf of the Government of the Federative Peoples Republic of Yugoslavia, not all of which have been laid down in my written reply of August 23, I have to confirm herewith:

(One) The Government of the Federative Peoples Republic of Yugoslavia regrets indeed that American pilots lost their lives at the accident of August 19, near Bled, when an American military transport plane crashed after disobeying signals to land;

(Two) As I already stated both orally and in writing to Anglo-American correspondents, I have issued orders to our military authorities to the effect that no transport planes must be fired at any more, even if they might intentionally fly over our territory without proper clearance, but that in such cases they should be invited to land; if they refused to do so their identity should be taken and the Yugoslav Government informed hereof so that any necessary steps could be undertaken through appropriate channels.

I also confirm my statement made on that occasion, on behalf of the Government of the Federative Peoples Republic of Yugoslavia that I consider objectless the American Government's note which was, to our surprise, unnecessarily and without reason too strong towards an Allied country as is Yugoslavia; the Government of the Federative Peoples Republic of Yugoslavia had ordered 24 hours prior to the handing over of the said note that the crew of the plane be released and that they be allowed to leave this country. The crew had been taken over by Mr. Hohenthal, the American Consul at 7:30 hours of August 22, i.e. full 8 hours before the note in connection with that crew was handed over.

Respectfully yours,

TITO MP.

E. THE ACTING SECRETARY OF STATE TO THE YUGOSLAV CHARGÉ D'AFFAIRES IN WASHINGTON, 3 SEPTEMBER 1946 (EXCERPTS)

(15 Department of State Bulletin, p. 501.)

SIR: I refer to a note dated August 30, 1946 which you left

at the Department of State in regard to alleged flights of United States planes over Yugoslav territory. In your note you refer to several notes of protest to the United States Government requesting that flights over Yugoslav territory be stopped and that inquiries be undertaken toward establishing those responsible

In summary, the Yugoslav Government has alleged that over the period from July 16 to August 29 278 unauthorized flights were made over Yugoslav territory, a high proportion of those flights being by bombers and fighters.

The United States Government has made a thorough and comprehensive investigation of these alleged flights over Yugoslav territory. In the course of this investigation the records of the various military headquarters and establishments of the United States in Europe were checked and the whereabouts of every American military plane in Europe during the period July 16 to August 29, inclusive was established. As a result of this exhaustive investigation, I am now in a position to provide you with the facts in regard to flights of American planes

[The Acting Secretary of State reviewed the results of the investigation and reached the conclusion that the violations of Yugoslav territory must have been made by planes other than United States planes.]

No American planes have flown over Yugoslavia intentionally without advance approval of Yugoslav authorities unless forced to do so in an emergency. I presume that the Government of Yugoslavia recognizes that in case a plane and its occupants are jeopardized, the aircraft may change its course so as to seek safety even though such action may result in flying over Yugoslav territory without prior clearance.

Two unarmed American transport planes have been shot down by Yugoslav fighters. The first incident occurred on August 9th. The pilot of this plane was specifically instructed to fly over Klagenfurt to Udine via Tarvisio, carefully avoiding Yugoslav territory. The weather information available to this pilot was inaccurate and he encountered heavy clouds, icing and high winds on his route. When he emerged into clear weather he believed that his plane was northwest of Udine in Italy. Actually, while under instrument flight conditions he had drifted off his course into Yugoslavia. The plane was then approached by three Yugoslav fighters. These fighters made no signal which could be interpreted as a landing signal. They did wobble their wings which, according to United States practice is the accepted signal to attract attention to the plane making the signal. The

Yugoslav fighters then attacked without any warning whatsoever. The transport plane then descended rapidly in an effort to land but was fired on during the descent. After the plane landed the passengers and crew were held from August 9 to August 22 by the Yugoslav authorities. During this period the passengers and crew were questioned frequently and the Yugoslav questioners attempted to persuade individuals to delete from their statements any reference to the bad weather they had encountered and were asked to include statements as to the satisfactory care afforded. The foregoing statements are taken from the report of the pilot and crew of the plane made after their release by Yugoslav authorities.

On August 19 an unarmed American transport aircraft left Vienna for Italy. In accordance with standard practice, the pilot was carefully instructed as to his route. These instructions included a directive to avoid Yugoslavia. It is impossible to give complete information as to what occurred on this flight. The pilot and crew of this unarmed American transport are dead, shot down by Yugoslav armed aircraft.

The Yugoslav Government has already received assurances from the United States Government that the United States planes will not cross Yugoslav territory without prior clearance from Yugoslav authorities except when forced to do so by circumstances over which there is no control such as bad weather, loss of direction, and mechanical trouble. Assurances along these lines were repeated in the note which the American Ambassador gave the Yugoslav Government on August 21, 1946. Standing orders in this sense governing the activities of American planes have been enforced throughout the period referred to in the several recent notes from the Yugoslav Government alleging violations of Yugoslav territory by American planes. These orders have, in fact, been carried out at all American air stations in central, southern and eastern Europe from which American planes fly in the vicinity of Yugoslavia, and will continue to be carried out in the future.

I do not believe that it would serve a useful purpose for me to add to the views which were expressed in the note which the Acting Secretary of State handed you on August 21 last in regard to the action of the Yugoslav Government in shooting down the two American transport planes on August 9 and August 19. Marshall Tito in his conversation with Ambassador Patterson on August 22 expressed his regret at the loss of American lives. I have noted the efforts of the Yugoslav authorities in the search

for the bodies of the five crew members and the honors shown the remains which were recovered. Marshall Tito further informed Ambassador Patterson of his order recited in your note of August 30 that Yugoslav planes should not fire on planes that might fly over Yugoslav territory.

The Yugoslav Government has released the crew and passengers of the transport plane which was forced down on August 9 with the exception of the wounded Turkish officer who was a passenger on the plane and is still in the hospital. I have been informed that the Yugoslav Government has advised the Turkish authorities that this Turkish officer is free to leave Yugoslavia when he is able to travel and that your Government has expressed its regrets concerning his injury.

The United States Government was glad to receive the assurances contained in Marshall Tito's note dated August 31st to Ambassador Patterson. The full text of that note reads as follows: . . .

[The text of the Yugoslav note to the American Ambassador in Belgrade of 31 August 1946 is reproduced in full.]

With reference to Marshall Tito's proposal for an agreement on signals, United States military representatives would welcome a discussion of this question and are prepared to meet Yugoslav military representatives at such time and place as your Government may designate, in order to reach an agreement regarding the signals to be employed.

I am constrained to advise you that the United States Government has confidently expected that expressions of Yugoslav regrets respecting the loss of members of the crew, who were killed as a consequence of the action of Yugoslav armed forces, would be accompanied by an offer to make suitable indemnification to the families and dependents of the unfortunate victims of such Yugoslav action. My Government expects that such indemnification will be made by the Yugoslav Government, as well as compensation for the destruction of and damage to the United States planes and other property caused by the two Yugoslav attacks.

Accept [etc.]

WILLIAM L. CLAYTON,
Acting Secretary.

F. UNITED STATES DEPARTMENT OF STATE PRESS RELEASE,
9 OCTOBER 1946

(15 Department of State Bulletin, p. 725.)

Upon instructions from the Department of State, the Ameri-

can Ambassador to Yugoslavia on October 8 delivered a note to the Yugoslav Government acknowledging the receipt of \$150,000 as indemnity for the lives of the five American aviators who were killed when their unarmed transport plane was shot down over Yugoslavia on August 19. The note further stated that, in compliance with the request of the Yugoslav Government, the United States Government would distribute this sum in five equal payments of \$30,000 each to the families of the deceased. The note added, however, that the United States Government could not accept the Yugoslav contention that the Yugoslav Government has no responsibility for the loss of the unarmed transports shot down on August 9 and 19, that these planes did not fly over Yugoslavia illegally but for reasons beyond their control resulting from adverse weather conditions and that therefore the United States Government must ask the Yugoslav Government to reconsider its refusal to make compensation for the loss of the two aircraft.